

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3080.)

[R12-220]

PREAMBLE

1. Citations to the agency's Notice of Rulemaking Docket Opening, the Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the *Register* as specified R1-1-409 (A) that pertain to the Record of the proposed rule:

Notice of Rulemaking Docket Opening: 18 A.A.R. 659 March 16, 2012
Notice of Proposed Rulemaking 18 A.A.R. 1108, May 18, 2012

2. Article, Part or Section Affected (as applicable) Rulemaking Action

| | |
|-----------|-------|
| R4-20-102 | Amend |
| R4-20-109 | Amend |
| R4-20-118 | Amend |
| R4-20-119 | Amend |
| Table 1. | Amend |

3. Citations to the agencies statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 32-1673.

Implementing statute: A.R.S. §§ 32-1673, 32-1681, 32-1682, 32-1683, 32-1684, 32-1685, 32-1687, 32-1691.01, 32-1694, 32-1695, 32-1696

4. The agency's contact person who can answer questions about the rulemaking:

Name: Lori D. Scott, Executive Director
Address: 1400 W. Washington, Rm 230
Phoenix, AZ 85007
Telephone: (602) 542-8158
Fax: (602) 542-3093
E-mail: director@asbdo.state.az.us

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The rule provides detailed licensing and regulatory information and procedural instructions. The Board is proposing to amend rule R4-20-102 for clarification on material necessary to submit with the application for licensure. R4-20-109 is being amended to clarify qualifications for reinstatement of an optician's license. R4-20-118 is amended to require opticians to maintain a record of the customer's prescription and a record of optical devices dispensed versus a copy of the prescription. R4-20-119 is amended to include filling prescriptions beyond the expiration date as sub-standard care. Table 1 is amended to change the time-frame on Optical Establishments to fall in line with other applications.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely or not rely in its evaluation of or justification for the rules and where the public may obtain or review the study, all data underlying each study, and any analysis of the study and other supporting material:

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

Not applicable

7. An explanation of the substantial change which resulted in the supplemental notice:

The Notice of Proposed Rulemaking did not allow sufficient time for comments as required by A.R.S. 41-1022. Additional formatting changes made.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.

9. The preliminary summary of the economic, small business, and consumer impact:

This rulemaking will not impact applicants. This will impact licensed opticians and establishments by clarifying qualifications already set forth in Statute for establishment licensing and will also help in eliminating paper by allowing establishments to keep electronic records. These changes will have a minimal impact on opticians and establishments.

10. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Lori D. Scott, Executive Director
Address: 1400 W. Washington, Rm 230
Phoenix, AZ 85007
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E-mail: director@asbdo.state.az.us

11. The time, place and nature of the proceedings to make, amend, or repeal or renumber the rule, or if no proceeding is scheduled, where when and how persons may request an oral proceeding on the proposed rule:

No oral proceedings are scheduled.

Written comments will be accepted by the Board office, Monday through Friday 8:00 a.m. – 5:00 p.m. at 1400 W. Washington Ste 230, Phoenix, AZ 85007, for 30 days from the date these supplemental proposed rules are posted in the *Register*.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule itself does not require a permit. However, the license required by statute arguably falls within the definition of general permit in A.R.S. § 41-1001.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any Incorporation by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

No changes

14. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

ARTICLE 1. GENERAL

Section

- R4-20-102. Application for a Dispensing Optician's License by Examination
R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement
R4-20-118. Unprofessional Conduct
R4-20-119. Substandard Care

Table 1. Time-frames (in days)

ARTICLE 1. GENERAL

R4-20-102. Application for a Dispensing Optician's License by Examination

At least 45 days before an examination date, an applicant for a dispensing optician's license by examination shall submit to the Board an application packet that contains:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
 - a. The applicant's name, Social Security number, address, and telephone number;
 - b. The name and address of the applicant's employer at the time of application, if applicable;
 - c. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(b), the name and address of each dispensing optician, physician, or optometrist for whom the applicant served as an apprentice for three of the six years immediately preceding the application date, and the beginning and ending dates of each apprenticeship;
 - d. If demonstrating technical skill and training under A.R.S. § 32-1683(5) (c), the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, degree received, and the name and address of each dispensing optician for whom the applicant served as a dispensing optician apprentice for one of the six years immediately preceding the application date and the beginning and ending dates of service. The applicant shall submit a photocopy of the applicant's diploma from the optical dispensing school;
 - e. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(d), the name and address of each dispensing optician, physician, or optometrist for whom the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of employment;
 - f. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
 - g. A statement of whether the applicant has ever had an application for a professional license denied or had a license suspended or revoked in any state; and
 - h. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the applicant's:
 - a. ~~high~~ High school diploma or general educational diploma issued in any state; or
 - b. Transcripts from a high school or college or
 - c. Evidence of a college degree or admission to any college in any state;
3. Verification of passing an ABO and NCLE Board examination in opticianry as evidenced by an original notice of examination results or a copy of the original certificate of passage issued by the organization that prepared the examination;
4. A letter attesting to good moral character from each of three individuals who are not family members, who have known the applicant for two years immediately before the date of the application, and support the applicant's licensure;
5. A letter from each physician, optometrist, or dispensing optician named in subsection (1) (c), (d), or (e) that contains:
 - a. The individual's printed name, address, and telephone number; and
 - b. A statement that the applicant has either served as an apprentice or been employed as a dispensing optician by the physician, optometrist, or dispensing optician for the time required in subsection (1) (c), (d), or (e).
6. A photograph of the applicant no smaller than 1 ½ x 2 inches and taken not more than six months before the date of application; and
7. The fee required in R4-20-112.

R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement

- A. No later than December 31 of each year, an applicant for renewal of a dispensing optician's license shall submit to the Board the fee required by R4-20-112, proof of continuing education credits required by R4-20-120, and an application form, provided by the Board, signed and dated by the applicant, and notarized that contains:
 1. The applicant's name, Social Security number, address, and telephone number;
 2. The name, address, telephone number, and Arizona license number of the optical establishment at which the applicant is currently practicing as a dispensing optician; and
 3. A statement that the information contained on the renewal application is correct.
- B. A licensee who submits a renewal application and renewal fee postmarked after December 31 but before January 31 of the following year shall pay the late fee in R4-20-112.
- C. A licensee who fails to submit a renewal application postmarked before January 31 following a license expiration of December 31, and who wishes to reinstate the license, shall:
 1. Submit a reinstatement application within one year of license expiration;
 2. Pay the renewal fee and the late fee in R4-20-112;
 3. Achieve a passing grade on the practical examination, unless the applicant has successfully completed the practical examination in the five-year period immediately preceding the license expiration; and
 4. ~~Submit evidence of passing the ABO and NCLE examinations.~~

R4-20-118. Unprofessional Conduct

In addition to actions specified in A.R.S. §32-1696, unprofessional conduct in the practice of optical dispensing includes the following:

1. Substandard care as specified in R4-20-119;
2. Failing to maintain a copy or record of the customer's prescription and failing to prepare and maintain a record of optical devices dispensed for at least three years. The record of optical devices dispensed shall include the brand, style, and size of the frame, if any, and the style, material, source, and all other information necessary to accurately reproduce each lens. The record shall be separate from optometrists' or physicians' records;
3. Failing or refusing to make a copy of a prescription or record described in subsection (2) promptly available to the customer who is the subject of the prescription or record, the customer's designated representative, the customer's prescribing practitioner, or the Board or its investigator, when requested. Notwithstanding this provision, a dispensing optician need not make the record of contact lenses dispensed on a trial basis available to the customer;
4. Failing or refusing to take corrective action or investigate a customer complaint concerning the manufacture or fit of eyeglasses, contact lenses, or other optical devices dispensed at the establishment by which the dispensing optician is employed if there is a substantial basis for the complaint;
5. Failure of any person, corporation, company, partnership, firm, association or society to maintain an active optical establishment license as required by R4-20-110; and
6. Failure to comply with a Board order.

R4-20-119. Substandard Care

A. It is substandard care for a dispensing optician:

1. To dispense improperly manufactured eyeglasses or contact lenses. If a complaint indicates that eyeglasses or contact lenses dispensed by a dispensing optician or other employee of an optical establishment may have been improperly manufactured, the Board shall be guided in its determination of the facts by referring to the standards incorporated by reference in subsection (B) with regard to the individual parameters listed in the standards and considering patient wear, care, and usage;
2. When interpreting written prescriptions;
 - a. ~~to~~ To fail to follow standards incorporated by reference in subsection (B) in determining lens powers due to differences in vertex distances, base curvatures, special lens requirements, and facial fitting problems, or
 - b. ~~to~~ To fail to comply with special instructions of the vision practitioner or optometrist shown on the prescription without the full knowledge and consent of the customer, the physician, or optometrist; or
 - c. To fill prescriptions beyond the expiration date indicated on the prescription;
3. To fail to follow manufacturer's guidelines regarding usual and customary lens thickness of eyewear;
4. To intentionally or negligently injure a customer during the course of optical dispensing; or
5. To fail to give the customer appropriate instructions on the care, handling, and wearing of an optical device.

B. The following standards published by the American National Standards Institute, Inc., (ANSI), 1819 L Street, NW, Suite 600, Washington, DC 20036, are incorporated by reference, and no further editions or amendments and are on file with the Board:

1. ANSI Z80.1 1999, "Prescription Ophthalmic Lenses-Recommendations."
2. ANSI Z80-20-1998, "Contact Lenses- Standard Terminology, Tolerances, Measurements And Physiochemical Properties."
3. ANSI Z80.5-2004, "Requirements for Ophthalmic Frames."
4. ANSI Z87.1-2003, "Occupational and Educational Personal Eye and Face Protection Devices."
5. ANSI Z80.9-1998 "Optical Devices for Low Vision."

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

Table 1. Time-frames (in days)

| Type of Approval | Statutory Authority | Overall Time-frame | Administrative Completeness Time-frame | Substantive Review Time-frame |
|--|--------------------------------------|---------------------------|---|--------------------------------------|
| Approval to Take a Dispensing Optician Examination (R4-20-102) | A.R.S. § 32-1682 | 90 | 30 | 60 |
| License by Examination (R4-20-102) | A.R.S. § 32-1682 A.R.S. § 32-1684 | 60 | 30 | 30 |
| License by Comity (R4-20-107) | A.R.S. § 32-1683 | 90 | 30 | 60 |
| Optical Establishment License (R4-20-110) | A.R.S. § 32-1684.01 | 30 <u>60</u> | 10 <u>30</u> | 20 <u>30</u> |
| Optician's License Renewal (R4-20-109) | A.R.S. § 32-1682 | 60 | 30 | 30 |
| Establishment License Renewal (R4-20-115) | A.R.S. § 32-1684.01 | 60 | 30 | 30 |